

Before the
Administrative Hearing Commission
State of Missouri



CLAIRE KAUFFMANN,

Petitioner,

vs.

DIRECTOR OF REVENUE,

Respondent.

No. 12-1713 RV

DECISION

Claire Kauffmann is not entitled to a refund of motor vehicle sales tax because she was not the owner of the vehicle that was replaced.

Procedure

On September 13, 2012, Claire Kauffmann appealed the Director of Revenue's ("the Director") denial of her claim for a refund of sales tax paid on a motor vehicle. The Director filed an answer on October 12, 2012. We held a hearing on May 16, 2013. Thomas A. Houdek represented the Director; Claire Kauffman represented herself. The case became ready for our decision on July 31, 2013, when the last written argument was due.

Findings of Fact

1. On August 1, 2011, Claire Kauffmann, her husband Curtis Kauffmann, and her daughter Elizabeth Kauffman, entered into a loan agreement with Postal Federal Community

Credit Union to purchase a 2008 Pontiac (“the Pontiac”). The previous owner of the Pontiac endorsed the certificate of title to Elizabeth Kauffmann as the purchaser.

2. Elizabeth Kauffmann submitted an application to the Director for title to the Pontiac. On August 2, 2011, the Director issued the title receipt listing Elizabeth Kauffmann as the owner of the vehicle, with a provision for transfer on death (“TOD”) to Claire Kauffmann. Claire Kauffmann paid the motor vehicle sales tax due on the Pontiac.

3. On April 25, 2012, the Pontiac was sold to Kimberly Head for \$9,500. On the bill of sale, Elizabeth Kauffmann is listed as the seller.

4. On May 31, 2012, Claire Kauffmann purchased a 2012 Honda (“the Honda”). On the same date, she submitted to the Director an application for title to the Honda. The Director issued the title receipt listing Claire Kauffmann as the owner, TOD to Curtis Kauffmann.

5. On August 29, 2012, Claire Kauffmann filed a refund claim with the Director in the amount of \$710.13, representing the amount of motor vehicle sales tax paid on the difference between the amount she paid for the Honda and the amount for which the Pontiac was sold.

6. On September 7, 2013, the Director issued a final decision denying the refund claim.

Conclusions of Law

We have jurisdiction to hear the complaint. Section 621.050.1.¹ Kauffmann has the burden of proof. Section 621.050.2. This Commission must decide the refund claim anew by applying the law to the facts. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990). Tax credits must be strictly construed against the taxpayer. *Hermann v. Director of Revenue*, 47 S.W.3d 362, 365 (Mo. banc 2001). This Commission must examine the credibility

¹ Statutory references are to the RSMo 2000 unless otherwise indicated.

of witnesses. *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992). We find Claire Kauffmann’s testimony credible and have made findings of fact accordingly.

Section 144.025.1, RSMo Supp. 2012, provides a replacement credit for motor vehicle sales tax under certain circumstances:

[W]here any article on which sales or use tax has been paid, credited, or otherwise satisfied or which was exempted or excluded from sales or use tax is taken in trade as a credit or part payment on the purchase price of the article being sold, the [sales] tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the actual allowance made for the article traded in. . . . **This section shall also apply to motor vehicles . . . sold by the owner . . . if the seller purchases or contracts to purchase a subsequent motor vehicle . . . within one hundred eighty days before or after the date of the sale of the original article[.]**

(Emphasis added).

Claire Kauffmann argues that she should be considered an owner of the Pontiac, even if her name was not on the title, because she was one of the parties who took out a loan to buy the Pontiac, and she subsequently paid the sales tax on it. In support of her argument, she provided a letter from the lender on the Pontiac stating:

On the 2008 Pontiac Grand Prix . . . Curtis and Claire Kauffmann were on the loan for the vehicle as borrowers along with Elizabeth Kauffmann. They were not put on the title as it was not our policy at that time that all parties had to be included. They were equal owners of the collateral and therefore have equal rights to all proceeds and or credits concerning the sale or transfer of this vehicle.[²]

But the Director is correct in asserting that a refund cannot be claimed based on § 144.025 unless the new vehicle and the replaced vehicle have the same owner of record. An “owner” is “any person, firm, corporation or association, who holds the legal title to a vehicle[.]” Section 301.010.1(42). A “person” includes:

² Resp. Ex. A (pages unnumbered).

. . . any individual, firm, copartnership, joint adventure, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, except the state transportation department, estate, trust, business trust, receiver or trustee appointed by the state or federal court, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number[.]

Section 144.010(7), RSMo Supp. 2012 (emphasis added). Individuals are “persons.” Family units are not.

Claire Kauffmann’s “TOD” status on the title to the Pontiac likewise does not mean that she was an “owner.” Section 301.681, RSMo Supp. 2012, allows a “sole owner of a motor vehicle” to request that the Director issue a title with such a designation on it. But § 301.681.4(1) provides that during the sole owner’s lifetime, no signature or consent of the beneficiary is required to transfer the vehicle. TOD status is not ownership.

Section 144.025 states that “the seller” of the replaced vehicle must purchase the replacement vehicle. Because Elizabeth Kauffmann owned and sold the Pontiac and Claire Kauffmann purchased the Honda, the replacement credit in § 144.025 does not apply. We have reached the same result in similar cases. *See Drossel v. Director of Revenue*, No. 05-1488 RV (Nov. 30, 2005), *Piskorski v. Director of Revenue*, No. 02-0344 RV (July 18, 2002), and *Lipira v. Director of Revenue*, No. 99-1590 RV (Apr. 7, 2000).

We understand that this result may seem harsh when considered against the realities of family life: the parents in this case helped their daughter buy a car by cosigning her loan, and they paid the sales tax on the car. It is understandable that they thought they would be entitled to the replacement credit when the car was sold and they bought a new one. But this Commission can only apply the statutes as written. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985). We do not have authority to apply principles of equity. *Straube v. Bowling*

Green Gas Co., 227 S.W.2d 666, 668-69 (Mo. 1950). On these facts, we cannot grant Claire Kauffmann's refund claim.

Summary

Claire Kauffman is not entitled to the motor vehicle sales tax refund she requested.

SO ORDERED on August 8, 2013.

\s\ *Karen A. Winn*

KAREN A. WINN

Commissioner